



**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

July 15, 2003

Fitness USA-Flint/Lansing Corporation
a.k.a. Fitness USA Supercenters
a.k.a. Fitness U.S.A. Health Spas
a.k.a. Fitness USA Corporation
a.k.a. Fitness Management Corporation
a.k.a. Detroit Health Corporation
7091 Orchard Lake Road, Suite 300
West Bloomfield, Michigan 48322-3666
Attn: William F. Hubner, Chairman of the
Board/President
James P. Hoppin, Vice President
Glenn A. Barth, Vice Pres./Secy./Treas.
Jodi Berry

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a.k.a. Detroit Health Corporation
P. O. Box 2659
Farmington Hills, Michigan 48333-2659
Attn: William F. Hubner, Chairman of the
Board/President
James P. Hoppin, Vice President
Glenn A. Barth, Vice Pres./Secy./Treas.
Jodi Berry

RE: EB-03-TC-054

Dear Correspondents:

This is an official **CITATION** issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (the Act), for violations of the Act and the Federal Communications Commission's rules that govern telephone solicitation.¹

It has come to our attention that your company has delivered one or more prerecorded unsolicited advertisements to residential telephone lines (see attachment). The Act and the Commission's rules prohibit transmission of unsolicited advertisements through prerecorded messages to residential telephone lines except under the very limited circumstances described in the rules.² The term "unsolicited advertisement" is defined in the Communications Act and the Commission's rules as "any material advertising the commercial availability or quality of any

¹ 47 U.S.C § 227; 47 C.F.R. § 64.1200.

² The Commission's rules make it unlawful to "initiate any telephone call using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party unless the call is initiated for emergency purposes or ... is not made for a commercial purpose, is made for a commercial purpose but does not include the transmission of any unsolicited advertisement, [is made] to any person with whom the caller has an established business relationship at the time the call is made, or [is made by or on behalf of] a tax-exempt nonprofit organization. 47 C.F.R. § 64.1200(a)(2), (c); *see also* 47 U.S.C. § 227(b)(1)(B) (prohibiting all prerecorded calls to residential lines "unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission...").

property, goods, or services which is transmitted to any person without that person's prior express invitation or permission."³ The attached information provided to the Commission indicates that your company delivered such unsolicited advertisements, through prerecorded messages, to one or more residential telephone subscribers who do not have an established business relationship with your company and had not expressly invited or authorized the call(s). Those actions violate section 64.1200(a)(2) of the Commission's rules.

Separately, it appears that your company may have violated other Commission rules governing prerecorded messages and telephone solicitation. Under section 64.1200(e)(2)(iv), any telephone solicitation – whether live or prerecorded – must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and an address or telephone number (which may not be for an autodialer or prerecorded message player) at which the person or entity may be contacted.⁴ According to the attached information received by the Commission, it appears that your telephone solicitation did not contain all the required information.

Please be advised that subsequent violations of the Communications Act or of the Commission's rules of the type described herein may result in the imposition of monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation.⁵

Pursuant to section 503(b)(5) of the Communications Act, you may request a personal interview at the Commission's Field Office nearest to your place of business. The nearest office appears to be the Detroit Office at 24897 Hathaway Street, Farmington Hills, Michigan 48335-1552, which you can contact by telephone at (248) 471-5661. You must schedule this interview to take place within 21 days of the date of this citation. Alternatively, you may submit a written statement to the following address within 21 days of the date of this citation:

Kurt A. Schroeder
Deputy Chief
Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission
445-12th Street, S.W.
Washington, D.C. 20554

If you choose to submit a written statement, your written statement should specify what actions have been taken to correct the violation(s) outlined above. Please reference EB-03-TC-054 when corresponding with the Commission.

³ 47 U.S.C. 227(a)(4); 47 C.F.R. 64.1200(f)(5).

⁴ 47 C.F.R. § 64.1200(e)(2)(iv). In addition, the Act and the Commission's rules impose separate identification requirements for prerecorded messages. Under section 227(d)(3)(A) of the Act, all prerecorded messages "shall, *at the beginning* of the message, state clearly the identity of the business, individual, or other entity initiating the call, and ... shall, during or after the message, state clearly the telephone number or address of such business, other entity, or individual." 47 U.S.C. § 227(d)(3)(A) (emphasis added); *see also* 47 C.F.R. § 64.1200(d)(e)(2)(iv) (imposing identification requirements for prerecorded messages delivered by automatic telephone dialing systems).

⁵ *See* 47 C.F.R. § 1.80(b)(3).

If you request a meeting, reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least 5 days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format): 202-418-0531 (voice), 202-418-7365 (tty).

Under the Privacy Act of 1974, 5 U.S.C. § 552(a)(e)(3), we are informing you that the Commission's staff will use all relevant material information before it to determine what, if any, enforcement action is required to ensure your compliance with the Act and the Commission's rules. This will include any information that you disclose in your interview or written statement. Please be advised that if you choose not to respond to this citation and a forfeiture is issued, your unresponsiveness will be considered in our assessment of a forfeiture amount.

You should also be aware that the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Thank you in advance for your anticipated cooperation.

Sincerely,

Kurt A. Schroeder
Deputy Chief
Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission

Enclosures